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United States Senate

COMMITTEE ON FOREIGN RELATIONS
WASHINGTON, D.C. 20510

August 3, 1979

ACTION
is assigned to
ARA

The Honorable J. Brian Atwood
Assistant Secretary for Congressional
Relations
Department of State
Washington, D. C. 20520

Dear Mr. Atwood:

I am enclosing portions of a copy of a letter from Professor James T. Richardson who, as a scholar, is interested in obtaining whatever additional information can be made available to him about the classified sections of the State Department's report on the Jonestown tragedy.

I would greatly appreciate having the Department look into this matter and providing me with as detailed an explanation as possible.

With best wishes,

Sincerely,

Frank Church
Chairman

Enclosure

DEPARTMENT OF STATE A/CDC/MR
REVIEWED BY [illegible] DATE 2/27/81
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IS AUTH. _____ REASON(S) _____
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THE UNIVERSITY OF NORTH CAROLINA
AT
CHAPEL HILL

Department of English

The University of North Carolina at Chapel Hill
Greenlaw Bldg. 066 A
Chapel Hill, N C 27514

April 19, 1979

Jimmy Carter
President of the United States
The White House
Washington, D.C.

Dear Mr. President:

For the past five months, I've been hard at work on a book about the Jonestown disaster, under commission from Times Books, New York, and have taken a year off from the English faculty at the University of North Carolina for the project. My commission is to try to discover the whys of Jonestown, a problem which virtually all Americans, I'm sure, still find totally incomprehensible.

But this has been five months of considerable frustration at trying to get to the basic documents which contain the answers for the serious student, because those documents have, so far, been held secret by various agencies in your Administration. In the days after the event, the F.B.I. crated up reams of documents and tapes of Jim Jones's nightly sessions and took them to Washington. To date, the rationale for the continued secrecy has centered on the fact that a grand jury is still proceeding in San Francisco.

I contend that less than 1% of the material taken from Jonestown could have any legal significance whatever, if the point of a grand jury is to hand down indictments against living persons. Those few survivors of the disaster who might conceiveably be targets for prosecution remain palpably suicidal. The example of Michael Prokes, the public relations officer for Jones, is proof of this point. His suicide after a press conference in Modesto, California, last month came after some sessions with the U.S. Attorney in California, in which Prokes was bargaining (as yet unsuccessfully) for immunity from prosecution. Prokes may have been suicidal all along, but his action demonstrates the fragility of the whole situation. It is totally impractical to think that the U.S. court system can provide redress for the deaths of Congressman Ryan or the deaths of the Jonestown community.

The FBI is not the only agency which is using technical, bureaucratic regulations to frustrate access to basic source material. The F.C.C., for example, has the best library of monitored tape recordings of the communications between Jonestown and San Francisco, going back more than a year and a half. For reasons which I can only interpret as an effort to salve a few bruised feelings, that infinitely valuable repository of material is being kept under lock and key.

Section 605 of the Communications Act is being used at the Commission as its rationale for secrecy, but my attorney has thoroughly researched that section of the Act, including the legislative history thereof, and concludes that this use of the Communications Act is totally without foundation. (Her brief is enclosed.)

With the FBI and the F.C.C., as well as the State Department and the CIA, I have filed Freedom of Information Act requests, and from none of them, have I even received an acknowledgment of the request.

The Jonestown affair is unprecedented in human history, and has been deeply disturbing to the American people. It cries out for serious study and explanation. In order that this may be accomplished, an official at the highest level of government, with the vision to see that no previously existing bureaucratic regulations can be relevant to such a catacysm, will need to free up this material for scholarly access.

I would greatly appreciate your help in this matter.

Respectfully yours,

James Reston, Jr.

JR:rc

Enc.

cc Senator Robert Morgan
Congressman L.H. Fountain

THE UNIVERSITY OF NORTH CAROLINA
AT
CHAPEL HILL

The University of North Carolina at Chapel Hill
Greenlaw Bldg. 066 A
Chapel Hill, N.C. 27514

April 19, 1979

Griffin Bell
Attorney General
Department of Justice
Washington, D.C.

Dear Mr. Attorney General:

For the past five months, I've been hard at work on a book about the Jonestown disaster, under commission from Times Books, New York, and have taken off a year from the faculty of the University of North Carolina for the project. I was in Guyana a week after the event and spent most of February there. I expect that I'll again be returning in the coming few months. My commission is to try to discover the whys of Jonestown, a problem that virtually all Americans, I'm sure, still find totally without reason.

But so far as the cooperation of the American government in this endeavor is concerned, this has been five months of frustration. As I'm sure you know, the F.B.I. crated up reams of documents, and tapes of Jim Jones's nightly sessions and took them to Washington. To date, the rationale that a grand jury still proceeds in San Francisco, has been used to keep the entire library classified.

I contend that less than 1% of the material taken from Jonestown could have any legal significance. There are only a few suvivors left, and they are all still of a very fragile state of mind. The suicide last month of Michael Prokes, the public relations officer for Jones, is proof of the point. As I expect you know, Prokes was bargaining for immunity from prosecution with the U.S. Attorney. In his final press conference immediately before his death, Prokes charged that the U.S. government continued to hold secret Jonestown documents, and particularly the final tape, because the materials were embarrassing. I can not pass judgment on that point, but if, as I say, the vast majority of the materials you hold have no legal interest whatever, then I do not feel your department is acting in the public interest by continuing to keep the material secret.

Jonestown is an event, unprecedented in human history, and one that the American people have found profoundly disturbing. The public interest lies in allowing serious writers to search for the answers to the question of how such a deed could have been done by Americans. It is my hope that a high Administration official will have the vision to see that technical, bureaucratic roadblocks should not be placed in the path of understanding this horrendous event.

Sincerely yours,

James Reston, Jr.

cc: Senator Robert Morgan
Cong. L.H. Fountain

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March 28, 1979

Mr. Richard D. Lichtwardt,
Executive Director
Federal Communications
Commission
1919 M. Street, N.W.
Washington, D.C. 20554

Dear Mr. Lichtwardt:

This request for access to all tape recordings, transcriptions, and other documents pertaining to the amateur radio transmissions between the People's Temple [hereinafter referred to as P.T.], San Francisco, California, and People's Temple, Jonestown and Georgetown, Guyana, S.A. in the possession of the Federal Communications Commission is made pursuant to the provisions of Freedom of Information Act, 5 U.S.C. §552, as amended. It is made through the undersigned attorney on behalf of James Reston, Jr., author. Preliminary inquiry by counsel for Mr. Reston to the Office of General Counsel indicated some Federal Communications Commission [hereinafter referred to as the F.C.C. or the Commission] concern that the above-described materials are not subject to disclosure under the Freedom of Information Act [hereinafter referred to as FOIA] because the Commission is prohibited from disclosing them under the provisions of the Radio Communications Act of 1934, as amended, 47 U.S.C §605.

Thus the Office of General Counsel has interpreted the requested material as material falling within the (b)(3) exemption to the FOIA. Although the Office of General Counsel has indicated to counsel for Mr. Reston that its decision is not final, but rather is subject to revision upon a proper showing by counsel for Mr. Reston that the materials are not within §605's confidentiality provisions, for purposes of simplicity in this request, it will be referred to as the decision of the Commission. Counsel submits that the general provisions of §605 are designed to protect the confidentiality of only certain classes of transmissions. Specifically exempted from the confidentiality provisions are all amateur transmissions. Ironically, it is the very sentence in §605--exempting the whole class of amateur transmissions from the confidentiality restrictions of the provision -- that the Commission fears prohibits disclosure of these materials to the requestor. We submit that they are specifically exempted

and that the Commission is therefore required to disclose the materials under the provisions of the FOIA. The materials sought concern events of tremendous national significance in the history of the United States. The public's interest in unraveling the mystery of the Jonestown murders/suicides is enormous. It is crucially important that this interest be met by responsible and thoughtful writing. The affairs of the People's Temple are the subject of a broad range of executive and congressional investigations. The interest of the public and their elected and appointed representatives is as deep as it is because the parallels between the People's Temple community, and other religious cults or organizations which have attracted vast numbers of young or old Americans, are very significant. Moreover, it is already clear from the hearings conducted by the Fraser Committee and House Report issued last fall, that certain abhorrent practices of the People's Temple community can be found in other cults in the United States. Yet, very little important information is available for public scrutiny and thoughtful study. The vast majority of it has been shrouded from view by the Guyanese government and by the government of the United States. James Reston, Jr., a member of the faculty of the University of North Carolina, Chapel Hill, is also the author of five books and numerous articles which have appeared in the New Yorker, the New York Times, the Saturday Review, and other publications. He is writing a book about P.T and an article for the New Yorker magazine, each of which will be widely disseminated. Clearly, the disclosure of the materials to Mr. Reston will be in the public interest because furnishing the information to the requestor can be considered as primarily benefitting the public. His writing should contribute to the nation's comprehension of the great attraction cults like PT possess, and the causes underlying the deaths of PT's members. For this reason, and the reasons described below, we submit that the materials are available under the FOIA and should be provided to Mr. Reston immediately.

The Legislative History of 47 U.S.C. §605 Demonstrates that All Amateur Transmissions Are Exempt From Its Provisions.

The origins of present §605 can be traced to the Radio Act of 1912 in which Congress first codified the custom of affording confidentiality to commercial transmissions. The Radio Act of 1912 was the subject of substantial debate in both the House and Senate. Both houses intended that some

measure of confidentiality be accorded to commercial communications transmission. Thus, Regulation 19 of the House bill H. R. 15357 provided:

> Every operator shall be obligated in his license to preserve, and shall preserve faithfully, the secrecy of radiograms which he may receive or transmit; and for failure to preserve such secrecy, his license maybe revoked by the Secretary of Commerce and Labor.

Regulation 19 of the Senate bill, S. 6412, similarly provided:

> Every operator shall be obligated in his license to preserve, and shall preserve faithfully, the secrecy of radiograms which he may receive or transmit; and for failure to preserve such secrecy, his license maybe revoked by the Secretary of Commerce and Labor.

Congressional concern for confidentiality of radio transmissions was directed solely toward commercial messages. The Committee on Merchant Marine and Fisheries reported H.R. 15357 (which was substantially identical to the Senate bill which ultimately passed both Houses) along with a report. The Committee Report explains that the secrecy provision was "required by the Berlin Convention" which addressed practices concerning commercial operations and "urged by the commercial concerns hearings before committees of Congress." S. Rep. No. 582, 62d Cong., 2d Sess. 16 (1912). The Senate Report similarly reveals no congressional intent to bring amateur transmissions within the secrecy provisions of Regulation 19. The Report of the Senate Committee on Commerce described all of the Senate bill's regulations of amateurs in a specific section of the report. See, S. Rep. No. 698, 62d Cong., 2d Sess. 10 (1912). Nowhere in the section of its report concerning amateurs did the Committee state its intention that the confidentiality provision applied to amateurs. Id. page 10.

Additional evidence of clear legislative intent to exempt all amateur transmission from the confidentiality provisions of the 1912 Radio Act can be found in the floor debates on the measure. Representative Alexander, the Chairman of the Committee on Merchant Marine and Fisheries, which had reported both H.R. 15357, and subsequently, S.R. 6214, was one of the sponsors and floor managers of the legislation.

As such, his remarks are entitled to great consideration. Federal Energy Administration v. Algonquin SNG, Inc., 96 S.Ct. 2295 (1976); National Woodworks Mfg. Ass. v. National Labor Relations Board, 386 U.S. 612 (1967); Richbourg Motor Company v. United States, 281 U.S. 528; United States v. Great Northern Railroad Co., 287 U.S. 144; Mastro Plastic Corp. v. National Labor Relations Board, 350 U.S. 270 (1956). In response to a question, Representative Alexander described the two broad instance in which amateurs were subject to regulations and penalties under the 1912 Act :

> if they use a wave length exceeding 200 meters or it [sic] interferes with government or commercial stations.

62 Cong. Record 7574 (1912). Further, an amendment substituting a fine or imprisonment as the penalty for violation of the secrecy provision of S. 6412 was offered during the floor debate by Representative Alexander. During the colloquy that followed, Representative Alexander again made it clear that the secrecy provision applied only to operators of commercial concerns and not amateurs:

> ...The regulation (secrecy) relates to radiograms and not to signals...

Representative McCall questioned the need for this provision;

> I do not know of any statute of the United States that would be in accordance with this. I think if an agent of a company receiving the dispatch, a telegraph operator, discloses the contents, the company would be liable for damages to the people who are interested in transmission of that message and to the man who had paid for it. I do not see why we should have any penal provision here when the practice and custom are so well settled as they are in the case of telegraph operators. The lot of one of these operators is sufficently hard now without putting criminal statutes in his path.

62 Cong. Record 10593 (1912). In response, Representative Alexander

did not contradict the limited application of the provision to the commercial communication industry but only noted that the Berlin Convention required a secrecy provision for commercial communication.

Indeed, Representative Alexander took great care to soften the only provisions of the bill that did penalize amateurs by offering an amendment to S. 6214. 62 Cong. Record 10592 (1912). That amendment made penalty for amateur interference with a government or commercial station or operation on a wave length exceeding 200 meters inapplicable unless the amateur had received prior formal notice of interference.

Additionally, in defending the confidentiality provision during the floor debate, Representative Alexander again described its limited application as follows:

> Many commercial transactions maybe carried on by wireless. Messages of the very greatest importance to the parties maybe involved and to say that an operator might disclose the contents of such a radiogram without incurring any penalty is not right or fair or just, it would be very dangerous indeed to allow them to do so. The International Conference thought it of so much importance that it expressly provided for a regulation of this sort should be adopted by the signatory nation.

62 Cong. Record 10596 (1912).

S. 6412, with amendment, passed both Houses and was signed into law. See, Cong. Record 10596, 10644; 10745; 10748 (1912). Subsequent amendments to the Radio Act of 1912, addressed below, did not alter the original purpose of the confidentiality provision --- to preserve the confidentiality of commercial communications made by commercial concerns --- and have not applied it to transmissions by amateurs.

As the use of radio communications grew, Congress found it necessary to tailor the 1912 statute to meet public and private needs. In 1923, the House Committee on the Merchant Marine and Fisheries considered several bills to amend the 1912 Act and issued a committee report to accompany the bill it reported. See, H. Rep. No. 1416, 67th Cong., 4th Sess. (1923). Although no substantive legislation concerning Regulation 19 of the 1912 Act was passed that session, the portion of the bill recommended by the House Committee pertaining to secrecy provisions bore a striking resemblance

to that portion of the 1927 Radio Act. Therefore, the Committee Report is highly relevant to the legislative history of the 1927 Act, and to present §605. The 1923 bill redrafted Sections 1, 2, and 3 of the 1912 Act incorporating most of its provisions and clarifying certain ambiguities. Id. at 3. The committee noted its intention to maintain the special status amateur operators had under the 1912 Act and made only one major change:

> The pending bill recognizes the privileged status accorded to amateurs by the Radio Act of 1912. That Act allocated to amateurs a wavelength of 200 meters.
>
> ... [A]nd in its place provides the wavelength for amateurs shall not be less than 150 meters, nor more than 275 meters. This change was desired by the amateurs and has the approval of the conference and of your committee. The amateur is the only user of radio to whom a definite assignment of wavelength is made in the law itself... The committee appreciates the value of the service which the amateur is rendering in the development of the art and in the training of skillful operators, and feels justified in continuing the special recognition accorded in the previous law.

Id. at 5. Obviously the committee had no intention of changing amateurs' status and applying Regulation 19's confidentiality provision.

A year later, during the first session of the 68th Congress, the House Committee on the Merchant Marine and Fisheries favorably reported another bill for consideration by the full House. Section 16 of that bill contained a secrecy provision for certain transmissions similar to Regulation 19 of the 1912 Act. Nowhere in the committee's report is there any evidence that the secrecy provisions were now to be made applicable to amateur transmissions. Rather, their exemption from the provision was continued:

> Section 16 of the bill is designed to secure secrecy in messages. There has been much complaint that unauthorized persons have intercepted messages and have made improper use of the information contained therein. It is provided that the section shall not

> apply to the receiving or utilizing the contents of radio communications transmitted by amateurs or others for the use of the general public or relating to ships in distress.

H. Rep. No. 719, 68th Cong. 1st Sess. 7(1924). If the Committee had intended some or all amateurs transmissions be kept secret, it would have stated so since this would have been a departure from the 1912 Act. Moreover, such an interpretation would have been and continues to be wholly inconsistent with the explanatory language contained in the House report of the need for secrecy: "There has been much complaint that unauthorized persons have intercepted messages..." Listening is interception. Therefore if the word "amateurs" is substituted for "unauthorized persons" the provision also would have prohibited amateurs from listening and then talking to each other. The very scheme of amateur communications established by the 1912 Act and continued by the 1924 bill would be nullified. This however, is the result reached by the Commission's interpretation and application of present §605 in this case. The result is ridiculous.

Because the 68th Congress failed to enact substantive legislation overhauling the 1912 Act, the respective committees in both Houses continued their hearings on pending legislation. Thus in February 1926, the House Committee on Merchant Marine and Fisheries reported out H.R. 9108 with a committe report. The purpose of H.R. 9108, inter alia, was to amend the radio law of 1912 to meet the needs created by an enormous increase in the number of transmissions. The secrecy provision of the 1912 Act however was not to be changed substantively as the Committee's Report indicates:

> The bill also seeks to protect messages and the contents thereof against reception and use by unauthorized persons. The section is a redraft of a provision of existing law. It seems to the committee a proper and necessary provision.

See, H.Rep. No. 404, 69th Cong. 1st Sess. 4 (1926).

A second report was issued approximately a month later by the Committee on Merchant Marine and Fisheries to accompany H. R. 9971 which was recommended by the full committee and which differs substantially from H. R. 9108 only by its elimination of the provision prohibiting receipt from any foreign country of certain radio parts or apparatus which

were the product of a monopolistic trade agreement. The secrecy provision contained in H. R. 9100 as described by H. Rep. No. 404, above, was unchanged. See, H. Rep. No. 464, 69th Cong. 1st Sess. (1926).

During the second session of the 69th Congress, each House voted on their respective bills to amend the 1912 Act and a Conference Committee was appointed. On January 27, 1927 the Conference Committee issued a report. See, Conference Report, H. Rep. No. 1886, 69th Cong. 2nd Sess. (1927). Section 27 of the bill (H.R. 9971) continued the 1912 Act's exemption of amateur transmissions from the general secrecy provision while making its application to others more explicit:

> No person receiving or assisting in receiving any radio communication shall divulge or publish the contents, substance, purport, effect, or meaning thereof except through authorized channels of transmission or reception to any person other than the addressee, his agent, or attorney, or to a telephone, telegraph, cable, or radio station employed or authorized to forward such radio communication to its destination, or to a proper accounting or distributing officers of the various communicating centers over which the radio communication may be passed, or to the Master of a ship under whom he is serving, or in response to a subpoena issued by a court of competent jurisdiction, or on demand of other lawful authority; and no person not being authorized by the sender shall intercept any message and divulge or publish its contents, substance, purport, effect, or meaning of such intercepted message to any person; and no person not being entitled thereto shall receive or assist in receiving any radio communication or use the same or any information therein contained for his own benefit or for the benefit of another not entitled thereto; and no person having received such intercepted radio communication or having become acquainted with the contents, substance, purport, effect, or meaning of the same or any part thereof, knowing that such information was so obtained, shall divulge or publish the contents, substance, purport, effect, or meaning of the same or any part thereof, or use

> the same or any information therein contained for his own benefit or for the benefit of another not entitled thereto; Provided That this section shall not apply to the receiving, divulging, publishing, or utilizing the contents of any radio communication broadcasted or transmitted by amateurs or others for the use of the general public or relating to ships in distress.

In the statement of the managers that accompanied the Conference Committee Report, the House managers indicated that the secrecy provision was the same provision as that found in the House bill, referred to above, as well as the Senate provision. Id., page 10. No change in the nonapplication of the confidentiality provision to amateurs was intended by the Conference Committee. Moreover, the language of this provision is clearly directed only at commercial concerns and operators, and not amateurs. If the word "amateurs" were substituted as the Commission's interpretation would have it, amateur transmissions would cease. Both Houses considered the Conference Committee Report and the recommended bill. In commencing debate in the House, Representative Frank D. Scott, one of the members of the Conference Committee whose remarks are therefore entitled to great deference and weight, described the relationship between the Conference Committee's bill and H.R. 9971 which is discussed above. He stated:

> Mr. Speaker and gentlemen of the House, during the last session of Congress, the House adopted H.R. 9971. The Senate amended the House bill by striking out everything after the enacting clause and inserted in lieu thereof a new bill, in large measures similar to the House bill, but in some respect substantially different. The House disagreed to the Senate amendments and granted the conference asked. The House is familiar with the provisions of the bill it adopted. It therefore would seem both wise and pertinent to discuss the particular features of this compromised bill which change the bill formerly adopted by the House, and my efforts will therefore be directed to such a purpose.

See, 69 Cong. Record 2564 (1927). Representative Scott described the changed provisions and specifically did not mention section 27, the secrecy provision. Id. pages 2557-2567.

In the Senate consideration of the Conference bill H.R. 9971, was accompanied by statements on the part of both its sponsors

and its opponents, Senator Pittman questioned the drafting of the secrecy provision as contained in the conference bill stating that:

> Section 27 of the Conference bill provides that - ...no person not being authorized by the sender shall intercept any message and divulge or publish the contents, substance, purport, effect, or meaning of such intercepted message to any person; .... This language does not limit such message to one of a private or personal nature, and therefore must apply to all messages. The language in its uncertainty is dangerous. It might be construed to prohibit the interception and publication of a speech by the Premier of England sent by the Broadcasting Corporation of England to the Radio Corporation of America. It might be construed to prevent the interception and publication of a speech by the President of the United States sent by one radio corporation to another radio corporation.

69 Cong. Record 4109 (1927). It is clear from the Senator's remarks that he addressed only transmissions made by a commercial carrier to another commercial carrier (corporations) and that he believed there should be some limitation on the nature of those transmissions so that transmissions that concerned matters of public interest would not be subject to the non-disclosure provision. Later on in the floor debates, Mr. Pittman again emphasized the application of the secrecy provision only to commercial concerns:

> Another proposition is this: It is made unlawful to intercept a message and to publish it without the consent of the sender. Such a law was enacted by Congress in connection with telegraph companies; a telegraph company is a different thing from a broadcasting company. A telegraph company owns its own wires, a broadcasting company owns nothing except the sending apparatus. What is the result? If they have no vested rights in the use of the ether, then that provision will absolutely fail. On the other hand, as I said, a great speech may be made by some statesman in England on some subject of world-wide interest and the broadcasting company of England may send it out to the Radio Corporation of America in New York. It may be intercepted by the New York Times or Herald or some of the other great papers of the country, but they would

> be prohibited under the provisions of the bill from publishing it without the consent of the sender. If we carried that proposition to its legitimate end throughout the country, let us see where we wind up...
>
> Of course, the newspapers have announced that they intend to violate any such absurd position. But when we are constructing a law of this importance, dealing with one of the great powers which has so recently come into existence, one which we have just discovered, why should we not give some thought to it? Why should we not realize that it is bound to be a monopoly and that the power in the hands of that monopoly, unless it is under the strictest control, it may be used for the oppression of the people of the country?

69 Cong. Record 4112 (1927). It is obvious from the sponsor's statements that the 1912 Act's secrecy provision applied only to telegraph companies and not to amateurs, as the Commission would have it in this case, and that the amendment to that provision to be made by the 1927 legislation was again solely to cover commercial concerns not the amateurs. Mr. Pittman was of course interested in insuring that broadcast or transmission by commercial concerns that were the subject of legitimate public interest would be placed in the public domain. There is absolutely nothing in the legislative history of the 1927 Act to support the Commission's interpretation in this case. In fact the legislative history of the predecessor provisions of §605, from which §605 was clearly drawn both implicitly and explicitly show that the secrecy provision was never intended to cover amateur transmissions no matter what their nature or purpose. The Commission's tortured interpretation in this case simply cannot stand against the cited legislative history.

When the 1927 Radio Act was amended in 1934, the secrecy provision was not altered, nor was it extended to cover amateur transmissions of any type. The 1968 amendments to §605 pertain primarily to law enforcement personnel. The 1968 amendments left unchanged §605's nonapplicability to amateur transmissions of any type. See generally, S. Rep. No. 1097, 90th Cong. 2d Sess. 1968; U.S. Code Cong. & Admin. News 2196. Thus the legislative history shows that the secrecy provision was never intended by the Congress to encompass any amateur transmission and the Commission's application of §605 to the transmissions by People's Temple is unwarranted and wrong.

People's Temple Station Was Classified As An Amateur Radio Station And All Of Its Transmissions Are Exempt From Section 605.

The case law concerning section 605 is strikingly devoid of any instance applying §605 to any amateur transmission. It provides absolutely no support for the Commission's denial of these materials to the requester but instead, firmly supports the requester's position that the tapes and other materials he seeks are subject to disclosure. Pursuant to its powers under §303, et. seq., of the 1934 Act, the Commission licensed People's Temple station, WD6DVI, as an amateur radio station. The Commission's designation of WD6DVI as an amateur radio station is binding and controls this matter. But the effect of the Commission's initial interpretation of §605 in this case, however, is to completely change the amateur classification of WD6DVI and classify it as a common communications carrier to which §605 clearly applies. The Commission is prohibited from changing a classification status under its own regulations without due process. Regulations prevent the Commission from altering, modifying, or revoking any radio station license including an amateur license without following a prescribed procedure. For example, 47 C.F.R. §97.49 provides the general criteria which permit license modification by the Commission. No modification may occur unless the FCC has issued a show cause order for modification and provided at least thirty days for the licensee to respond. No show cause order was issued to the People's Temple amateur station nor was its license as an amateur station modified, restricted, or forfeited. Only a cautionary letter was issued in August. 1978 and throughout the period of time the tapes sought by the requester were monitored and recorded, People's Temple station was an amateur licensee and therefore its transmissions are not covered by §605. Similarly, People's Temple station's license was not revoked during the period of time the requested tapes were made. 47 C.F.R. §1.91 et.seq. require the Commission

to follow certain procedures for revocation of an amateur license.

The Commission cannot transform, in effect, the amateur classification of the PT's station by applying an erroneous interpretation of §605 so to deny Mr. Reston's request when its own regulations forbid such a transformation without following established procedure.

FCC Emphasis On The Content Of People's Temple Communications So To Invoke The Provisions Of §605 Is Misplaced.

Part of the Commission's initial view that §605 may bar disclosure of the requested materials stems from its misplaced emphasis on the content of some of the People's Temple's transmission. Although certain communications between PT and its Jonestown outpost concerned business affairs of PT, these transmissions are nonetheless amateur transmissions to and from an amateur radio station and are therefore exempted from §605's confidentiality provision. The Commission has wrongfully focussed its analysis on the content of the transmissions instead of the classification of the licensee. Content analysis, while appropriate to determine if PT violated the Commission's regulations governing amateur traffic, is entirely inappropriate in determining whether §605 applies. Section 605, as the legislative history described above makes clear, specifies the categories or classifications of licensees that come within its provisions. It specifically exempts amateurs. The Commission has read the words "for public use" as a limitation on the kind of transmissions made by amateurs which are exempted from §605. This is wrong. As described above, there is absolutely no legislative history that would support such a view. In fact, the legislative history is quite to the contrary. Congress intended all amateur transmissions to be exempt. The legislative history of the 1927 Act, infra, indicates Congressional concern that newspaper could be prohibited from publishing excerpts from transmissions that were clearly in the public domain because they concerned news events. Inferentially, the words for public use refer to the transmissions by others than amateurs described in §605's proviso. But the legislative history is abundantly clear that amateur transmissions in their entirety have been exempt from §605's provisions.

If the standard urged by the Commission in this case were to be adopted, §605 would read: "communications by amateurs concerning third party business affairs in violation of FCC Regulations may not be disclosed except as provided by Chapter 119, Title 18, U.S. Code". Clearly such a provision is wholly inconsistent with what Congress intended and provided in the statute. Moreover, numerous amateur operators monitored the transmission of the PT amateur station and made tape recordings of the transmissions. Other amateurs intercepted and transcribed the messages by hand. Many, like Edward Wescott of Oakridge Tennessee intercepted and disclosed some of the very same material the Commission believes is covered by §605. Ed Wescott, the subject of the attached news articles from the Knoxville, Tennessee newspapers was "net control" for the world-wide Medical Emergency Amateur Radio Council in 1977 and 1978. During this time he intercepted and taped certain PT communications. In June 1978, he wrote various government officials about PT communications -- thereby, in the Commission's present view, unlawfully divulging the unlawfully intercepted communications. Since then, he and many other amateurs have voluntarily given their tapes and other documents to the FBI and other law enforcement agencies, newspaper offices and others in the business of reporting the news. If the Commission's erroneous interpretation is allowed to stand, Mr. Wescott and the many other amateurs who tried to advise government officials about PT on the basis of intercepted transmissions and who have assisted their government in subsequent investigations of PT will be liable personally for damages to PT and its remaining members. This result is so completely at odds with the provisions of §605 and the nature of amateur transmissions that it cannot bear scrutiny.

Transmissions Unlawfully Made Are Not Within The Provisions Of Section 605.

The Commissionb initial position is grounded in part on its determination that the requested materials concerned "business affairs" of PT which were not "for the use of the public" and therefore are not exempt from §605's secrecy provision. This result is also wholly at odds with the consistent line cases that have held §605 inapplicable to transmissions not lawfully made. In United States v. Sugden, 226 F. 2d 281 (9th Cir. 1955), affirmed per curiam, 351 U.S. 916, the United States Court of Appeals for the Ninth Circuit accepted the view urged by the FCC in that case: §605 does not apply to unlawful radio transmissions however private the participants intended those transmissions to be. The court stated that "To throw a mantle of protection provided

by §605 over an outlaw broadcast is to abandon reason...before any right of privacy exists under §605 the voice must legally be on the air." The third party transmissions pertaining to the business affairs of PT violated Commission Regulations §97.114 (c). Yet the Commission has reasoned that this unlawful transmission was therefore "not intended for public use" and it is therefore prohibited from disclosing the materials to the requester. This is nonsense. It is the rule that transmissions which are unlawful are outside the protection of §605. It is interesting to note that in this case the Commission urges a position flatly at odds with the one it urged in Sugden, which was affirmed by the United States Supreme Court. It is at odds with the rulings of numerous lower courts as well and will not withstand court scrutiny. See, Casey v. United States, 191 F. 2d 1 (9th Cir. 1951); Hanna v. United States 404 F. 2d 405 (5th Cir. 1968); Brandon v. United States, 382 F. 2d. 607 (10th Cir. 1967); People v. Garber, 275 C. A. 2d 119 (1969).

Confidentiality Provisions Of §605 Apply Only To Transmissions Made With A Reasonable Expectation Of Privacy.

The legislative history and the case law that has evolved concerning §605 clearly demonstrate that the confidentiality provisions have absolutely no application to amateur transmissions. In virtually every case in which §605 has been applied by a court there was a reasonable expectation of privacy and limited transmission of the communication intended by the participants. Indeed, the expected confidentiality or privacy of the transmission is precisely what Congress intended to protect when it enacted the predecessors of present §605.

In Goldstein v. United States, 316 U.S. 114, 125 (1941) Justice Murphy described Congress' purpose in enacting §605:

> The statute expresses a rule of public policy. In enacting §605, Congress sought to protect society at large against the evils of wiretapping and kindred unauthorized intrusions into private intercourse conducted by means of the modern media of communication, telephone, telegraph, and radio. (dissenting opinion of Justice Murphy).

Private intercourse does not describe amateur transmissions. Indeed if certain amateur transmissions are covered by §605 then presumably thousand of amateur operators violate its provisions annually. §605 forbids the interception and disclosure of any radio communication unless the interception is authorized by the sender. It thus forbids amateur operators from listening to one another unless authorized. Listening is clearly "interception" within the meaning of §605. United States v. Sugden, 226 F. 2d. 281 (9th Cir. 1955), affirmed per curiam, 351 U.S. 916. Moreover, discussion among various amateur operators about transmissions made by other amateurs which are subject to §605 also violates the provision because such discussions are "disclosures" of "intercepted" radio communications within the meaning of the statute. The Commission's tortured interpretation of §605 in this case will put thousands of amateur operators in violation of the law. Obviously this is inconsistent with Congressional intent and purpose to exempt all amateur transmissions from §605's liability provisions.

It is also at odds with the case law. The vast majority of all §605 litigation involves disclosure of common carrier communications which were made by telephone, wire or telegram. See, eg. Nardone v. United States, 308 U.S. 338 (1938); Weiss v. United States, 308 U.S. 321 (1938); United States v. Palakoff, 112 F 2d. 888 (2nd Cir. 1940); United States v. Gruber, 123 F. 2d. 307 (2nd Cir. 1941); Reitmeister v. Reitmeister, 162 F. 2d 691 (2nd Cir. 1947); Swarthout v. Michigan Bell Telephone Co., 504 F. 2d 748 (7th Cir. 1974); United States v. Russo, 250 F. Supp. 55 (E. D. Pa. 1966); Bubis v. United States, 384 F. 2d. 643 (9th Cir. 1967). The remaining portion of cases primarily applying §605 pertain to nonbroadcast radio operations such as FM simplex and multiplex transmissions. The participants' expectation is that these transmissions may be disclosed to a few additional persons but they will not be disclosed to the public at large.

No court has ever construed §605 so to apply its confidentiality provisions to communications by an amateur radio station or licensee. Amateur transmissions are made with no expectation of privacy, rather they are made with the most public expectations. By their very nature, they are designed to elicit responses from random or unknown stations. All amateur communications are therefore transmitted "for the use of the general public" and are exempt from §605's nondisclosure provisions.

In conclusion, I submit that there is no basis on which to justify the Commission's application of §605 to the tapes sought

by Mr. Reston. All legal precedent, legislative history, the nature of the communication under review, and simple logic place the requested materials outside §605's nondisclosure provision, and they are therefore available under the FOIA. On behalf of my client, I request a prompt response to this Memorandum and further request that the Commission waive all or substantially all of the costs for locating the requested materials. As you know, the amendments to the FOIA permit you to reduce or waive fees if it "is in the public interest because furnishing the information can be considered primarily benefitting the public". Clearly the materials sought contain a matter of significant national attention and Mr. Reston's book and article for the New Yorker Magazine will be widely disseminated.

If for any reason access is denied to any part of the requested materials, please describe the deleted materials in detail and specify the statutory basis for your denial as well as your reasons for believing that the alleged statutory justification applies in the particular instance. Also please separately state your reasons for not invoking your discretionary powers, where applicable, to release the requested documents in the interest of the public. Such a statement will of course be helpful to my client in appealing an adverse determination and in formulating an argument in the event of appeal. I trust that the foregoing analysis and precedent will provide the Commission with the necessary legal authority to revise its initial determination and therefore make the requested materials available to Mr. Reston.

I await your prompt reply.

Sincerely yours,

Denise Leary
Attorney for James Reston, Jr.

DL:mlg

cc: David Saylor

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20 July 1979

COMMITTEE ON
JUL 26 1979
FOREIGN RELATIONS

The Honorable Frank Church
United States Senate
Washington, DC 20515

Dear Senator Church:

I am writing to you because of a professional concern and interest in an issue that you might know something about and could help me understand. I am a sociologist who does research on the new religious movements and have gotten involved in the Jonestown-People's Temple tragedy because of my record of research over the past 10 years or so. I am enclosing a copy of my vita for your information; you will see that I have written a number of papers and books about new religious movements.

My specific interest in Jonestown and People's Temple, not because of the event itself, is because I was called on quite often by representative of the media to comment. I have written one paper about the People's Temple group and will be giving a major address in October to the Society for the Scientific Study of Religion at its annual meeting. I acquired a copy of the government report on the Guyana tragedy, and was puzzled about one particular aspect of the report. A number of sections of the report are classified. I could not understand why some of that information would be classified, although I had heard some rumors and read some accusations of things that raised questions in that area. Because I was curious about the classified sections, I wrote to my Congressman, Jim Santini, who gave me a rapid and candid response. He indicated that some of the material involves transcripts of sensitive interviews needed to be classified in order to protect the sources. He also, however, verified one of the questions I had posed and that is the fact that some of those classified portions deal with "allegations of CIA and FBI involvement in an alleged conspiracy against Jones."

I am very curious about this kind of involvement. You may have heard that one particular newspaper in the country, Workers World, has accused the CIA of collusion to destroy Jonestown in a series of articles that have appeared there. If you do not have copies of these, I would be happy to furnish them.

I am writing to you because of your keen interest and record of monitoring the CIA. I wonder if there is any way that I can possibly get information about what is in the classified sections of the report and what the CIA involvement was with Jim Jones and with Jonestown. I need this information very much, as I am a scholar in the area and want to understand what has happened and to help bring such information to other scholars in the field. I would particularly like to have more information before I give my speech in October.

If you can be of any assistance to me, I would greatly appreciate it.

Sincerely,

Jim Richardson

James T. Richardson
Professor of Sociology

Encl.